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Supreme Court of the United States

October Term, 1960

No. 849

JUAN GARCIA,

Petitioner,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of the State of New Mexico sustaining the decision of the District Court of Valencia County, New Mexico, is reported at 347 P. 2d 1005, a copy of which is annexed to petitioner's brief as Appendix A.

JURISDICTION

The judgment of the District Court, Valencia County, New Mexico, was entered on September 30, 1957. Order of the Supreme Court of the State of New Mexico affirm-

ing judgment of the trial court was entered November 13, 1959. A petition for rehearing was denied January 11, 1960. The petition for a Writ of Certiorari was filed April 11, 1960. The jurisdiction of this court is improperly sought by petitioner to be invoked under TITLE 45, SEC. 51, U.S.C.A., commonly known as the Federal Employers' Liability Act.

QUESTION PRESENTED

Whether the court has jurisdiction under the Federal Employers' Liability Act for a personal injury when:

(1) Employer railroad had connected to petitioner's living quarters a mess hall, where meals were available, and a commissary car, where stationery could be purchased, and petitioner without justification refused to avail himself of these privileges;

(2) Petitioner was injured at a time when he was not on duty and when he was free to go where he pleased, being subject to call only in case of emergency and if he were available;

(3) Petitioner was injured while traveling on his own time from the living quarters to town to obtain stationery for himself, an act which was not a necessary incident to his employment.

STATUTE INVOLVED

TITLE 45, U.S.C.A., SEC. 51 provides in pertinent part as follows:

"'Any employee *** any part of whose duties as such employee shall be the furtherance of interstate or

foreign commerce; or shall, in any way directly and substantially, affect such commerce *** shall be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter."

STATEMENT OF THE CASE

Petitioner resided in Albuquerque, New Mexico, when employed to work at Kiowa, Kansas, as a laborer where he was furnished living quarters (R. 156-157), together with eating (R. 159) as well as commissary facilities where stationery and other items were available for purchase by the petitioner (R. 365). He worked eight hours a day, five days a week, and could be called for extra work only in case of emergency and if he were available (R. 200).

Living quarters furnished were bunk cars, and attached thereto was a mess hall where three meals a day were served five days a week, and on the remaining two days only two meals were served, at 9:00 A.M. and at 2:00 P.M. (R. 159). Petitioner paid for the meals served whether he ate them or not (R. 363).

On Saturday, a day on which he was not working and while he was free to come and go as he pleased (R. 201), petitioner left his quarters, walked past the mess car at a time when the afternoon meal was being served (R. 160). He did not eat as he was not hungry (R. 212), but started for Kiowa, Kansas, to buy stationery (R. 210). In leaving the work train for town he cut across the railroad tracks and climbed between freight cars of a train stopped on a nearby track. While standing on the coupler the train was moved and petitioner's foot was injured (R. 163). A safe route from the living quarters to the main street into town was provided by the employer (R. 191, 193), and it was

not necessary for the petitioner to travel the route he chose to Kiowa, Kansas, for a meal or for stationery, as both of the latter were made available by the employer at the work train. Also petitioner, in voluntarily leaving the premises, gave no indication as to when he might return, as he was off duty the following day, which was Sunday.

The two courts below agree as to all material facts (R. 498 — Petitioner's Appendix A, 2, 3, 9).

ARGUMENT

Petitioner throughout his appeal to the Supreme Court of the State of New Mexico, and here, ignores or refuses to acknowledge the fact that he was subject to call for work only in cases of emergency if he were available and that the very items that he was going to town to purchase were made available by the employer in railroad cars adjacent and connected to the living quarters. At the time of injury petitioner was not using the facilities furnished, but left the premises for private purposes at a time when he was free to go where he pleased. In voluntarily leaving the work train he chose his destination and route of travel, and at the time of injury was not in the performance of any of the duties as an employee of the railroad.

On the basis of the facts in this case there is no conflict in the decisions cited by the petitioner, and the facts as shown, namely, that the petitioner refused to accept meals or purchase stationery which was available adjacent to his living quarters, will affect few, if any, other litigants. This case is not weighed with sufficient gravity and general importance in order to secure uniformity of decisions.

Cases cited in support of the petition when limited to the question presented are readily distinguishable.

Mostyn v. Delaware, L. & W. R. Co., 2 Cir., 160 F. 2d 15

(Injured while using accommodations provided by railroad to prepare for work or rest and recreation).

Atlantic Coast Line R. Co. v. Smalls, 4 Cir., 216 F. 2d 842

(Injured while attending safety meeting at request of employer who furnished transportation).

Atlantic Coast Line R. R. v. Meeks, 208 S.W. 2d 355

(Injured by exploding lamp in quarters furnished by railroad).

Casso v. Penn. R. Co., 128 F. Supp. 909; 3 Cir., 219 F. 2d 303

(Injured while on premises when on 24-hour duty).

Brown v. Union Pac. R. Co., 235 P. 2d 506

(Injured while enroute to another job while being paid travel time).

Healy v. Penn. R. Co., 3 Cir., 184 F. 2d 209

(Killed while attending war bond rally when employee instructed as to time and place and paid for attending).

Nor. Car. R. R. Co. v. Zachary, 232 U.S. 248

Virginian Ry. Co. v. Early, 4 Cir., 130 F. 2d 548

Chicago, M., St. P. & P. R. Co. v. Kane, 9 Cir., 33 F. 2d 866

Brock v. Chicago R. I. & P. Ry. Co., 266 S.W. 691

(Temporary stoppage of work for purposes necessarily incident to life).

Southern Railway Co. v. Lloyd, 239 U.S. 496

Nor. Car. R. R. Co. v. Zachary, 232 U.S. 248

N. Y. Central R. R. Co. v. Marcone, 281 U.S. 345

Lavender v. Kurn, 327 U.S. 645

Bailey v. Central Vermont R. Co., 319 U.S. 350

Grecelius v. Chicago M. & St. P. Ry. Co., 223 S.W. 413

(Killed or injured while working on an engine or in yards).

Other cases cited in the petition are not applicable, as they deal with negligence, which is not the question presented.

The decision of the Supreme Court of New Mexico was not, as contended by petitioner, entirely based upon *Atchison, T. & S. F. R. Co. v. Wottle*, 10 Cir., 193 F. 2d 628. This case has never been overruled nor is it inconsistent with the cases cited by petitioner, but when the facts and questions presented in the cited cases are construed they lend support to the Wottle case and collectively show, as stated in *Quirk v. New York, C. & St. L. R. Co.*, 7 Cir., 189 F. 2d 97:

> "* * * there is a point beyond which its application must be denied."

This decision was augmented by the Wottle case when the court stated, at page 630:

> "But, given its most liberal interpretation, the Act cannot be extended to cover activities not necessarily incident to or an integral part of employment in interstate commerce. It obviously does not cover activities

undertaken by an employee for a private purpose and having no causal relationship with his employment. Quirk v. New York C. & St. L. R. Co., 7 Cir., 189 F. 2d 97. The difficulty arises, as always, in drawing the dividing line in the twilight zone. Adjudicated cases are helpful only as factual analogies."

Here there is no conflicting evidence and only one possible inference could be drawn by a jury. Therefore, the trial court properly held as a matter of law that the Act was without application, and since the two courts below agree as to the material facts without conflict, this court will consider the facts only so far as is needful to pass on a question of law. *Risty v. Chicago, R. I. & P. Ry. Co.*, 270 U.S. 378. Thus the facts, being as stated, present only a question of law which was properly resolved by the courts below.

CONCLUSION

The decision below was clearly correct. We respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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